IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.95 OF 1992

1.Mr.N.Ranganath
2.Smt.Chitra Ranganath ...Appellants

vs.

1.A.A.Khurshid
2.Sampatrao Gulabdas Mane
3.Oriental Fire and General Insurance Co.Ltd.
4.New India Assurance Co.Ltd. ...Respondents

Mr.C.M.Lokesh for the Appellants
Mr.S.M.Dange for Respondent No.4.

CORAM: A.S.OKA,J.
DATE : DECEMBER 18,2007.

ORAL JUDGMENT:

1. I have heard the submissions of the learned counsel for the parties. The Appeal is by the original claimants in a claim petition filed under section 110-A of the Motor Vehicles Act,1939. The Appellants are the claimants who have claimed compensation on account of death of their daughter Rashmi whose age at the time of accident was 8 years.

2. According to the case of the Appellants, on 21st April 1985 they were travelling in a private car bearing No.MRG 4579 by Bombay Goa National Highway. There was a collision between the said car and a truck bearing No.MHQ 3681. As a result of the injuries sustained in the accident, the minor daughter died. The Applicants also suffered injuries. After the trial, the tribunal came to the conclusion that the accident

occurred on account of rash and negligent driving of the car as well as truck. The learned Member of the tribunal held that the owner of the car and the insurer of the car were liable to pay 70% of the compensation. The liability of the owner of the truck and the insurer of the truck was fixed at 30%. The compensation of Rs.25,000/- was awarded by the tribunal with interest at the rate of 12% p.a. The learned Member of the tribunal held that after her marriage, the deceased daughter would have stayed with her husband and therefore he fixed the compensation amount at Rs.25,000/- which was payable on account of no fault liability.

3. The submission of the learned Advocate for the Appellants is that the compensation awarded by the tribunal is on the lower side and the claim made by the Appellants in the sum of Rs.65,000/- ought to have been allowed. Without prejudice to the said contention, he placed reliance on the decision of the Apex Court in case of Oriental Insurance Company Vs. Sayyed (JT 2007 (11) S.C. 113). The submission of the learned Advocate for the Respondent No.4 (the insurer of the truck) is that in fact the insurance company is not liable to pay compensation. He submitted that, in any event, considering the fact that the accident occurred in the year 1984 and considering the age of the deceased, the compensation awarded of Rs.25,000/- is just and proper and no interference is called for.

4. I have considered the submissions made by the Advocates for the parties. As there is no cross objection or Appeal preferred by any of the Respondents, the only issue to be decided is as regards the quantum of compensation.

5. The age of the deceased at the time of accident was about 8 years. In the case of Oriental Insurance Company (supra) the Apex Court was dealing with the claim of a minor whose age was about 7 years at the time of accident which occurred in the November 1994. In the case before the Apex court, the tribunal had awarded Rs.51,500/- as compensation. The amount was enhanced by the High Court to Rs.1,52,000/-. The Apex court confirmed the Award made in the sum of Rs.51,500/- by setting aside the enhancement granted by the High Court. In paragraph 9 of the said Judgment the Apex court has held thus:

"9. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated bases. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many

that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

6. In the case before the Apex Court the age of the deceased child was 7 years and in the present case the age of the deceased was 8 years. Moreover, the Apex court was dealing with a case where the accident had taken place in the year 1994 whereas in the present case, the accident occurred in the year 1984. Therefore, the compensation of Rs.51,500/- cannot be awarded in this case. However, compensation of Rs.25,000/- awarded by the tribunal is certainly on the lower side.

7. Considering the aforesaid decision of the Apex Court, in my view, a reasonable amount of Rs.45,000/- ought to have been awarded by way of compensation. To that extent, the Appeal must succeed. On the sum of Rs.25,000/- the tribunal has granted interest at the rate of 12% p..a. However, considering the subsequent reduction in the rates of interest of nationalised banks, interest on enhanced amount will have to be fixed at the rate of 9% p.a. Rest of the Judgment and Award will have to be maintained.

8. Hence, I pass the following order :

i) In addition to the compensation awarded under the impugned Judgment and Award, the Respondent nos.1 to 4 shall pay a sum of Rs.20,000/- to the Appellants together with interest at the rate of 9% p.a. from the date of filing of the claim petition till deposit of the amount.

ii) The liability of the Respondents will be as per the impugned Judgment and Award.

iii) The Respondents will have to pay proportionate costs of this Appeal to the Appellants.

iv) Time of four months is granted to deposit the additional amount in terms of the Judgment.

v) Parties and the concerned court to act upon an authenticated copy of this order.

JUDGE